



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

18-CR-108-EAW

ROBERT MORGAN, FRANK GIACOBBE,
TODD MORGAN, AND MICHAEL TREMITI,

Defendants.

STIPULATION BY AND AMONG THE UNITED STATES OF AMERICA, ROBERT MORGAN, PROPOSED INTERVENOR 59 UNION LLC, MS UNION LLC, AND THE CANANDAIGUA NATIONAL BANK AND TRUST COMPANY RELATED TO FORFEITURE ALLEGATIONS AGAINST UNION SQUARE APARTMENTS UNDER SUPERSEDING INDICTMENT 18-CR-108-EAW (DKT. NO. 42)

With regard to the United States of America's Forfeiture Allegations against the premises, buildings, appurtenances, improvements and real property located at 59 Union Square Boulevard, Chili, New York, known as the Union Square Apartments ("Union Square Apartments"), under Superseding Indictment 18-CR-108-EAW at pp. 51-57 (the "Forfeiture Allegations"), the United States of America, Robert Morgan, Proposed Intervenor 59 Union LLC, MS Union LLC, and The Canandaigua National Bank and Trust Company (which shall be deemed to include the financial institutions participating in the construction loan between The Canandaigua National Bank and Trust Company and 59 Union LLC) (collectively the "Parties") hereby stipulate as follows:

1. Whereas, the Parties wish to see the construction of and any improvements to the real property located at 59 Union Square Boulevard in Chili, New York continue and be completed and in order to permit such completion of its construction, the United States of

America hereby agrees to release the Notice of Pendency, attached hereto as **Exhibit A**, that was filed by it on June 3, 2019 against Union Square Apartments. Nothing in this Stipulation may be construed as the United States of America conceding that the Notice of Pendency filed in this action was improper in any manner. Upon the Court So Ordering this Stipulation, the Parties agree that 59 Union LLC may file with the Monroe County Clerk's Office the Release of Notice of Pendency attached hereto as **Exhibit B**.

2. Union Square Apartments is listed as being subject to forfeiture allegations in the Superseding Indictment 18-CR-108-EAW (Dkt. No. 42), incorporated herein by reference.

3. The United States of America hereby agrees that it will not pursue as part of its forfeiture claims, and specifically and expressly waives any claim to the forfeiture of, The Canandaigua National Bank and Trust Company's secured interest in any monies loaned and advanced thus far and to be loaned and advanced to 59 Union LLC by The Canandaigua National Bank and Trust Company up to the amount of \$17,500,000.00 on Union Square Apartments, as well as any related principal and interest payments which have been and will be made by 59 Union LLC to The Canandaigua National Bank and Trust Company.

4. The Parties further agree that any payments due to The Robert Morgan Limited Partnership III under a Line of Credit Promissory Note dated August 16, 2018 (the "Promissory Note"), attached as **Exhibit C**, shall be escrowed, but only to the extent of, and in the amount of, any portion of such payments that are due to Robert Morgan as the result of his ownership interest in The Robert Morgan Limited Partnership III (the "Escrowed Payments") until further order of the Court.

5. The United States of America and Robert Morgan shall mutually agree and provide direction to 59 Union LLC as to what percentage or portion of payments due to The

Robert Morgan Limited Partnership III under the Promissory Note constitutes Escrowed Payments.

6. The Escrowed Payments shall be paid to, and held in an escrow account by, an escrow agent to be mutually agreed upon by the United States of America and Robert Morgan. No Escrowed Payments will be paid to or held in any account established or managed by the United States Marshals Service or the United States of America until further order of the Court.

7. The Parties further acknowledge that all payments due to The Robert Morgan Limited Partnership III under the Promissory Note are subject to The Canandaigua National Bank and Trust Company Subordination Agreement and the Perticone Holdings LLC Subordination Agreement (attached as **Exhibit D**).

8. Nothing in this Stipulation shall limit Robert Morgan's right to contest the forfeiture of the Escrowed Payments.

9. 59 Union LLC is not restrained from making payments to third parties related to the Union Square Project with the exception of those payments defined as Escrowed Payments hereunder, subject to further orders of the Court. Notwithstanding the foregoing, the United States of America hereby agrees that it shall not seek an order of the Court restraining the payment by 59 Union LLC of the principal and interest payments described in paragraph 3 of this Stipulation.

10. In consideration of the foregoing, and in the event that this Stipulation is Ordered by the Court, Proposed Intervenor 59 Union LLC hereby withdraws its Motion to Intervene and to Vacate and/or Cancel the Notice of Pendency on 59 Union LLC's real property filed with this Court on July 12, 2019.

Dated: July 26, 2019

THE UNITED STATES OF AMERICA

By: JAMES P. KENNEDY, JR.
United States Attorney

/s/ Mary Clare Kane
Mary Clare Kane
Assistant United States Attorney
United States Attorney's Office
Western District of New York
138 Delaware Avenue
Buffalo, New York 14202

GIBSON DUNN & CRUTCHER, LLP

By: /s/ Joel M. Cohen
Joel M. Cohen
Attorneys for Robert Morgan
200 Park Avenue
New York, New York 10166

BOND, SCHOENECK & KING PLLC

By: /s/ Brian Laudadio
Brian Laudadio
*Attorneys for 59 Union LLC and
MS Union LLC*
350 Linden Oaks, Third Floor
Rochester, NY 14625

UNDERBERG & KESSLER LLP

By: /s/ Thomas F. Knab
Thomas F. Knab
*Attorneys for The Canandaigua National
Bank and Trust Company*
50 Fountain Plaza, Suite 320
Buffalo, New York 14202

SO ORDERED:


Hon. Elizabeth A. Wolford

7-26-2019